

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

JOE HOLCOMBE *et al.*,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

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Civil Action No. SA-18-CV-555-XR

Consolidated Cases

JOINT PRETRIAL ORDER

In accordance with the Court's Orders at the hearing held on February 26, 2021, the parties submit this Joint Pretrial Order.

I. LIABILITY PHASE

A. EXHIBITS

On **March 12, 2021**, the Government and Plaintiffs (all Plaintiffs will file one collective document) will file a Joint Exhibit list related to the submission of written and video deposition designations. The Joint Exhibit list will be admitted into evidence for use by the Court in reviewing the designated deposition trial testimony and for use by the Parties at the in-person trial on April 5, 2021. Parties may also submit any deposition exhibits which are objected to, with the other party's objection and the party's response.

No later than **March 19, 2021**, the parties will exchange remaining trial exhibits each side intends to use and meet and confer over agreements for Joint Exhibits and objections.

On **March 26, 2021**, the Government and Plaintiffs (all Plaintiffs will file one collective document) will submit to the Court a list of Joint Exhibits, Plaintiffs' Exhibits, and Government Exhibits that may be admitted without objection. All exhibits with no objection will be admitted the first day of trial.

B. WITNESSES

Witnesses by written or video deposition submission

The Parties agree that the following witnesses should be submitted via written deposition or video deposition submission:

1. Robert Spencer ¹	Written submission
2. Owen Tullos	Written submission
3. Yonatan Holz	Video submission
4. Shelley Ann Verdejo ²	Written submission
5. John Owen ³	Written submission
6. Clinton Mills	Video submission
7. Ryan Sablan	Written submission
8. James Hudson	Written submission
9. Robert Bearden	Video submission
10. James Hoy	Video submission
11. Nathan McLeod-Hughes	Written submission
12. Randall Taylor	Video submission
13. Lyle Bankhead	Video submission
14. Vince Bustillo	Written submission
15. Emily Willis	Written submission
16. Robert Ford, Jr.	Written submission
17. James Poorman	Written submission
18. Candace Marlowe	Written submission
19. Academy Witnesses (Perry Davis, Nicholas V. Moreno, William Fowler, Jr., Rene Canales, Answers to Deposition by Written Questions by Perry Davis)	Written submission

On or before **March 1, 2021**, the Parties shall submit to each other page and line designations of witnesses to be submitted by video or written deposition.

On or before **March 8, 2021**, the Parties shall exchange objections and counter designations.

On or before **March 12, 2021**, the Parties will file with the Court the designated transcript portions of written and video deposition testimony. The parties will submit flash drives to the Court containing the written and video transcript deposition testimony. The deposition transcripts will be marked as trial exhibits.

¹ The Government's pre-trial relevance objection to this witness is overruled. The Court, however, will entertain any objections (including relevance) to specific questions identified in the page/line designations or transcript portions.

² The Government's pre-trial relevance objection to this witness is overruled. The Court, however, will entertain any objections (including relevance) to specific questions identified in the page/line designations or transcript portions.

³ The Government's pre-trial relevance objection to this witness is overruled. The Court, however, will entertain any objections (including relevance) to specific questions identified in the page/line designations or transcript portions.

For witnesses submitted by video deposition, the Parties will provide the Court with the video files on a rolling basis from **March 19–26, 2021**. The parties will submit flash drives to the Court containing the video files. The video files will be marked as trial exhibits.

Witnesses by remote video teleconference technology or live

Parties will call the following witnesses by remote teleconferencing technology or live. Where designated by an asterisk, Parties have designated that they will be called in person if possible. Otherwise, they will be called by remote video teleconference technology.

Plaintiffs' Case-in-Chief:

1. Terry L. Snyder*
2. Danielle Shields*
3. Michelle Shields*
4. Michael Kelley*
5. Rebecca Kelley*
6. Kimberley Del Greco*
7. Daniel Webster
8. Larry Youngner
9. Jon Rymer

Government's Case-in-Chief:

10. William Ryan*
11. Erin Higgins (née Brassfield)* ⁴
12. John Donohue
13. Stephen J. Barborini
14. James Fox
15. Harold Bursztajn
16. Daniel Breyer

⁴ The Court granted Plaintiffs' Motion for leave to depose this witness, if needed, because the witness was not disclosed in the Government's list of individuals likely to have discoverable information under FRCP 26 nor its Interrogatory answer to identify all persons with knowledge of relevant facts under LR CV-33. The Court overruled Plaintiffs' objection to the Government's late designation of this witness.

Plaintiffs' Rebuttal Expert

17. Jeffrey Metzner

C. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING LIABILITY

Each side will file a proposed Findings of Fact and Conclusions of Law no later than 30 days after the end of the liability phase of this trial.

D. OPENING AND CLOSING ARGUMENTS

The parties have waived opening statements. The Court will allow for closing arguments. The amount of time will be determined at a later date.

E. TRIAL MECHANICS

To allow for social distancing during this COVID-19 pandemic, the Court will utilize a Zoom platform so that all counsel, litigants and interested parties may watch the proceedings. All parties should limit the number of individuals inside the courtroom to indispensable personnel only.

Any party desiring to introduce testimony or exhibits that contain confidential or sensitive material should approach the Court to request that this material be discussed under seal. The Court, however, cautions all parties that this is an open court and requests to seal will be seldomly granted.

The Parties may consult with the Court's Coordinator, Ms. Sylvia Fernandez, and coordinate a time and date for their IT personnel to visit the Trial Courtroom to be used in order to test technology equipment.

II. DAMAGES PHASE

Upon submission of the parties' proposed findings of fact and conclusions of law, the Court will render a decision as to liability as soon as possible. Should the Court find liability, trial will resume as to damages, the Court will require that the parties submit a list of witnesses and exhibits, and testimony and evidence will be taken as soon as possible.

Respectfully Submitted,

/s/ Jamal K. Alsaffar

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Civil Division

United States Department of Justice

Counsel for Defendant

UNITED STATES OF AMERICA

IT IS SO ORDERD:

HON. JUDGE XAVIER RODRIQUEZ

United States District Judge